

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JOHN C. DUVALL, Register No. 444618,)	
)	
Plaintiff,)	
)	
v.)	No. 06-4083-CV-C-NKL
)	
CORRECTIONAL MEDICAL SERVICES,)	
et al.,)	
)	
Defendants.)	

ORDER

On May 30, 2006, the United States Magistrate Judge recommended dismissing plaintiff's claims, pursuant to 28 U.S.C. § 1915(g), because plaintiff has had three or more cases or appeals dismissed as frivolous or for failure to state a claim. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on June 12, 2006. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

The court further notes that although plaintiff states he was not a prisoner when he filed his complaints in Duvall v. Seefeldt, No. 99-0106 (E.D. Mo. 2000), and Duvall v. Evans, No. 01-0036 (E.D. Mo. 2002), the record reflects plaintiff to have been an inmate confined in the Marion County, Missouri, jail, and thus, such cases are properly considered under section 1915(g). See 28 U.S.C. § 1915(g) ("‘prisoner’ means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.”)

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is

considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the Magistrate Judge's May 30, 2006 Report and Recommendation is adopted [5]. It is further

ORDERED that plaintiff is denied leave to proceed in forma pauperis and his claims are dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(g), because plaintiff has had three or more cases or appeals dismissed as frivolous or for failure to state a claim.

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: July 5, 2006
Jefferson City, Missouri